

Rejections under 35 U.S.C. § 103

Claims 1-4 and 6-9 (now Claims 1, 6, 7, and 9) have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Windlund (Patent No. 5,454,804).

The Applicant respectfully traverses the rejection(s) on this basis.

The Examiner contends that Windlund teaches the invention substantially as claimed but fails to disclose fold lines. As well, the Examiner further contends that fold lines would have been a matter of obvious design choice.

It is basic patent law that the rejections of the Applicant's invention under 35 U.S.C. § 103 must comport with the classic standard set forth in *Graham v. John Deere Company*, 383 US 1, 148 USPQ 459 (1966) as summarized in MPEP § 2141. "Under § 103, the scope and content of the prior art are to be determined; difference between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or non-obviousness of the subject matter is determined." According to the MPEP § 2141, when applying 35 U.S.C. § 103, there are four basic tenets of patent law must be adhered to:

1. The claimed invention must be considered as a whole;
2. The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
3. The references must be views without the benefit of impermissible hindsight vision afforded by the claimed invention; and
4. Reasonable expectation of success is the standard with which obviousness is determined.

The courts have firmly established, "Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination." *Carela v. Starlight Archery*, 804 F.2d 135, 231 USPQ 644 (Fed. Cir. 1986). The lower courts have persistently adhered to this

ruling, "Both the suggestion and the expectation of success must be found in the prior art, not in the applicant's disclosure." *University of California v. Synbiotics Corp.* 29 USPQ 2d 1463, 1466 (Cal. 1993).

If one looks to the Applicant's invention and the reference as whole, it is submitted that Windlund's teachings, do not render Applicant's invention obvious because Windlund does not teach or suggest each and every element within Claim 1. The Applicant's invention discloses a disposable absorbent article side wrapping elements that integral with the main body portion of the disposable article. These side wrapping elements are folded along fold lines such that the side wrapping elements are positioned in an in-use- position prior to use of the disposable absorbent article. Windlund teaches an absorbent article with flaps that are formed of a separate material piece that are mutually joined to an article casing. This is not a teaching of side wrapping elements that are integral and folded along fold lines such that the side wrapping elements are positioned in an in-use-position prior to use. Furthermore, there is no suggestion in Windlund of the desirability to have side wrapping elements that are folded along fold lines to an in-use- position prior to use. Thus, the Windlund does not render Claim 1, 6, 7, and 9 of the Applicant's present invention obvious.

From this evidence, Windlund does not teach or suggest each and every element within Claim 1. Claims 6, 7, and 9 depend from 1, therefore, the reference does not render Claims 1, 6, 7, and 9 under 35 U.S.C. § 103.

For the reasons given above, the Examiner is respectfully requested to withdraw the rejections under 35 U.S.C. § 103.

SUMMARY

All of the relevant rejections in the Office Action have been discussed.

No new matter has been added by the Amendment.

In light of the discussions contained herein, Applicants respectfully request reconsideration of all rejections and allowance of all claims. Early and favorable action is respectfully requested.

Respectfully submitted,

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Versions with Markings to Show Changes Made

1. Disposable absorbent article (20) for wear in an a undergarment, comprising: a longitudinal axis (L) and a transverse axis (T), said disposable absorbent article comprising a main body portion (21) having longitudinal side edges (23) substantially extending parallel to said longitudinal axis (L) and having transverse side edges (22) substantially extending parallel to said transverse axis (T), said main body portion (21) further having a wearer facing surface and a garment facing surface, and said disposable absorbent article comprising [composing] side wrapping elements that are integral with said main body portion (21) said wrapping elements being folded along fold lines and attached to said garment facing side of said main body portion such that said side wrapping elements are [being] pre-positioned in an in-use-position prior to the use of the disposable absorbent article. [, the side wrapping elements being attached to the main body portion about a pair of curvilinear fold lines.]